REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

Status of Claims

Claims 1-3, 6-8, 10-13 and 16-20 are currently pending in the application of which claims 1, 6 and 12 are independent.

Claims 4-5, 9, and 14-15 have been canceled without prejudice or disclaimer to the subject matter recited therein.

In the Office Action dated December 9, 2009, claims 1-3, 6-8, 10-13 and 16-20 were rejected.

By virtue of the amendments above, claims 1, 6, 12, and 20 have been amended. Independent claims 1, 6, and 12 were amended to include the features of the network query server requesting data related to how the resources in the network are used from a network mediation system. Support for that amendment may be found in the specification, at least in paragraph [0016] and Fig. 2. Other amendments were made to further clarify the elements recited therein.

No new matter has been introduced by way of the amendments above. Entry thereof is therefore respectfully requested.

Summary of the Office Action

Claims 1-3, 16 and 17 were rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter.

Claims 12, 13 and 16-20 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinct claim the subject matter.

Claims 1, 2, 6, 11, 12, 17, and 20 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 7,032,022 to Shanumgam et al. (hereinafter "Shanumgam") in view of U.S. Patent No. 6,778,972 to Leonardos (hereinafter "Leonardos").

Claims 3, 7, 8 and 13 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shanumgam in view of Leonardos, and further in view of U.S. Patent No. 7,257,581 to Steele et al. (hereinafter "Steele").

Claim 10 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shanumgam in view of Leonardos, and further in view of U.S. Patent No. 6,584,505 to Howard et al. (hereinafter "Howard").

Claims 16, 18 and 19 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shanumgam in view of Leonardos, and further in view of U.S. Patent Application Publication No. 2003/0009507 to Shum (hereinafter "Shum").

The rejections above are respectfully traversed for at least the reasons set forth below.

<u>Drawings</u>

The indication that the Drawings submitted on October 22, 2003 have been approved is noted with appreciation.

Claim Rejection Under 35 U.S.C. §101

Claims 1-3, 16 and 17 were rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Specifically, the Office Action asserts that the analyzer comprising a client, server, and firewall recited in claim 1 are intended to be software and thus, non-statutory. However, that assertion is respectfully traversed. Independent claim 1 recites a network query client and a network query server. Clients and servers are tangible computer devices. Computer devices are statutory under 35 U.S.C. §101. As such, it is respectfully submitted that the network usage analyzer in independent claim 1, comprising the network query client and server, is statutory under 35 U.S.C. §101. Therefore, it is respectfully requested that the rejection of claims -3, 16 and 17 were rejected under 35 U.S.C. §101 be withdrawn.

Claim Rejection Under 35 U.S.C. §112

Claims 12, 13, and 16-20 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, claim 12 was rejected because "the network usage query" had insufficient antecedent basis. In response, claim 12 has been amended to provide proper antecedent basis for the network usage query. Therefore, it is respectfully requested that the rejection of independent claim 12 and its dependent 13, 19, and 20 be withdrawn.

Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for

purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex*

Inc., 550 U.S.398, 82 USPQ2d 1385 (2007):

> "Under §103, the scope and content of the prior art are to be determined; differences
> between the prior art and the claims at issue are to be ascertained; and the level of
> ordinary skill in the pertinent art resolved. Against this background the obviousness
> or nonobviousness of the subject matter is determined. Such secondary considerations
> as commercial success, long felt but unsolved needs, failure of others, etc., might be
> utilized to give light to the circumstances surrounding the origin of the subject matter
> sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S.
> 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and

the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim

must be considered in judging the patentability of that claim against the prior art." *In re*

Wilson, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining

Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal

Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual

inquiries are resolved, there must be a determination of whether the claimed invention would

have been obvious to one of ordinary skill in the art based on any one of the following proper

rationales:

> (A) Combining prior art elements according to known methods to yield predictable
> results; (B) Simple substitution of one known element for another to obtain
> predictable results; (C) Use of known technique to improve similar devices (methods,
> or products) in the same way; (D) Applying a known technique to a known device
> (method, or product) ready for improvement to yield predictable results; (E)
> "Obvious to try"—choosing from a finite number of identified, predictable solutions,
> with a reasonable expectation of success; (F) Known work in one field of endeavor
> may prompt variations of it for use in either the same field or a different one based on
> design incentives or other market forces if the variations would have been predictable
> to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the
> prior art that would have led one of ordinary skill to modify the prior art reference or

to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S.398, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness."

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

- **Claims 1, 2, 6, 11, 12, 17, and 20:**

Claims 1, 2, 6, 11, 12, 17, and 20 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shanumgam in view Leonardos. This rejection is respectfully traversed for at least the following reasons.

  o Independent Claim 1:

Independent claim 1 recites, *inter alia*,

> a network query client residing in a first network; and
> a network query server residing in a second network protected by a
> firewall, wherein said network query <u>client</u> is configured … to <u>send a
> query to the network query server related to how resources in the second
> network are used</u>, wherein the network query <u>server</u> is configured … to
> <u>collect data related to how resources in the second network are used by
> requesting data related to how the resources in the second network are
> used from a network mediation system and receiving the requested data
> from the network mediation system</u>, and to send collected data to the
> network query client …

Thus, independent claim 1 recites a network query client ("client") in a first network, a network query server ("server") in a second network protected by a firewall, wherein the

client is configured to send a query to the server related to how resources in the second

network are used, and wherein the server is configured to collect data related to how

resources in the second network are used and send that collected data to the client.

Shanumgam in view Leonardos fails to teach or suggest those claimed features recited in

claim 1 for the following reasons.

Shanumgam discloses in Fig. 1 a policy management system including private local

networks 102, 104, and 106 coupled to a public Internet 108. The private local networks 102,

104, and 106 are protected by a firewall to control outsiders including web surfers 112, dial-

up network users 114, unauthorized website servers 116, email spammers 118, and remote

virtual private network (VPN) clients 140 from accessing the resources in the primate local

networks 102, 104, and 106 (See *Shanumgam*, from col. 3, line 53 to col. 4, line 20). The

firewall, VPN, bandwidth, and administration policies of the private local networks are

controlled by a policy server 122 in the private local network 102 (col. 4, lines 13-18).

In Fig. 3, the policy server 122 of the private local network 102 includes a policy

management module 308 to create policies related to the firewall of the private networks 102,

104, and 106 (See col. 7, lines 6-11) and a central policy management module 306 (detail in

Fig. 4) acting as the network administrator of the organization of Fig. 1 (col. 7, lines 27-35).

As such, in Shanumgam, the private local networks 102, 104, and 106 can be

considered servers protected by the firewall, and the users 112, 114, 118 and 140 can be

considered clients seeking to access the resources in the servers (col. 3, lines 53-64).

Furthermore, the system in Shanumgam relates to how the policy server 122 of the private

local network 102 controls the firewall, VPN, bandwidth, and administration policies of the

entire network (See col. 4, lines 13-18). However, Shanumgam fails to teach or suggest that

the clients 112, 114, 118, and 140 send a query to private local networks 102, 104, and 106 related to how resources in the private local networks are used. Because the clients 112, 114, 118, and 140 do not send such a query to the servers, the servers 102, 104, and 106 do not collect information related to how the resources are used and send the collected information to the clients. As a result, Shanumgam fails to teach or suggest a network query client configured "to send a query to the network query server related to how resources in the second network are used" and a network query server configured "to collect data related to how resources in the second network are used, and to send collected data to the network query client," as recited in claim 1.

Furthermore, claim 1 has been amended to recite that the server collects data related to how the resources in the network are used "by requesting data related to how the resources in the second network are used from a network mediation system and receiving the requested data from the network mediation system." In Shanumgam, the servers 102, 104, and 106 do not request data from a network mediation system. Moreover, there is no network mediation system in Shanumgam. Therefore, Shanumgam fails to teach or suggest the server requesting data related to how the resources in the second network are used from a network mediation system and receiving the requested data from the network mediation system, as recited in claim 1.

In the rejection of claim 1, the Office Action asserts that the "Administrator with computer" in col. 7, lines 30-35 of Shanumgam is the "network query client" recited in claim 1 (See *Office Action*, page 3). However, that assertion is respectfully traversed because the administrator described in col. 7, lines 30-35 of Shanumgam is part of the policy server 122 inside the private local network 102, which acts as a server protected by the firewall (See col.

4, line 13 and col. 7, lines 30-35). As such, the network administrator described in col. 7, lines 30-35 is a server and cannot be the network query client recited in claim 1.

In the rejection of claim 1, the Office Action asserts that Shanumgam discloses the claimed features of "wherein said network query client is configured to send a query to the network query server related to how resources in the second network are used" in col. 9, lines 1-9 (the VPN connections, VPN traffic, bandwidth) and in col. 19, lines 36-45 (view specific times/resources) (See *Office Action*, bottom of page 3). However, that assertion is respectfully traversed because the VPN connection, VPN traffic and bandwidth mentioned in col. 9, lines 1-9 are related to the health and status of the VPN (virtual private network) connections. These connections are unrelated to a client sending a request or query to the servers, much less related to a client sending a query related to how the resources in the network are used. Moreover, the viewing of specific times and resources disclosed in col. 19, lines 36-45 is related to the user scheduling the start and end times for using the resources. Thus, the viewing of specific times and resources in col. 19, lines 36-45 is unrelated to sending a query on how the resources in the network are used. Therefore, contrary to the assertion in the Office Action, col. 9, lines 1-9 and col. 19, lines 36-45 do not teach or suggest the network query client sending a query to the network query server related to how resources in the network are used.

Leonardos is used to show a client residing in a first network and a server residing in a second network (See *Office Action*, page 4). However, in setting forth the rejection of claim 1, the Examiner has not and cannot reasonably assert that the disclosure contained in Leonardos makes up for any of the deficiencies with respect to Shanumgam. Accordingly, even assuming for the sake of argument that one of ordinary skill in the art were somehow

motivated to modify Shanumgam with the disclosure contained in Leonardos, the proposed

modification would still fail to yield all of the features of independent claim 1.

For at least the foregoing reasons, the Examiner has failed to establish that

independent claim 1 is *prima facie* obvious in view of the combined disclosures contained in

Shanumgam and Leonardos, as proposed by the Examiner. Therefore, withdrawal of the

rejection of independent claim 1 and allowance of this claim is respectfully requested.

      o   <u>Independent Claims 6 and 12:</u>

Independent claims 6 and 12 recite features similar to those of independent claim 1 as

discussed above, wherein the "network usage query" recited in independent claims 6 and 12

is similar to the "query … related to how the resources in the second network are used"

recited in independent claim 1. Thus, independent claims 6 and 12 are also believed to be

allowable over the cited documents of record for at least the same reasons as set forth to

independent claim 1 above. It is therefore respectfully requested that the rejection of

independent claims 6 and 12 be withdrawn, and these claims be allowed.

      o   <u>Dependent Claims 2, 11, 17, and 20:</u>

Claims 2, 11, 17, and 20 are dependent from one of independent claims 1, 6 and 12.

Thus, they are also believed to be allowable over the cited documents of record for at least

the same reasons as set forth to independent claims 1, 6 and 12 above. It is therefore

respectfully requested that the rejection of claims 2, 11, 17, and 20 be withdrawn, and these

dependent claims be allowed.

- **Claims 3, 7, 8, and 13:**

Claims 3, 7, 8, and 13 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Shanumgam in view of Leonardos and Steele. This rejection is respectfully traversed for at least the following reasons.

Claims 3, 7, 8, 13 are dependent from one of independent claims 1, 6, and 12. As discussed above, the proposed combination of Shanumgam in view of Leonardos fails to disclose all of the features of independent claims 1, 6, and 12. In setting forth the rejection of claims 3, 7, 8, and 13, the Examiner has not and cannot reasonably assert that the disclosure contained in Steele makes up for any of the deficiencies with respect to the proposed combination. Accordingly, even assuming for the sake of argument that one of ordinary skill in the art were somehow motivated to modify the proposed combination of Shanumgam in view of Leonardos with the disclosure contained in Steele, the proposed modification would still fail to yield all of the features of independent claims 1, 6, and 12, from which claims 3, 7, 8, and 13 depend.

For at least the foregoing reasons, the Examiner has failed to establish that claims 3, 7, 8, and 13 are *prima facie* obvious in view of the combined disclosures contained in Shanumgam, Leonardos and Steele, as proposed by the Examiner. Therefore, withdrawal of the rejection of claims 3, 7, 8, and 13 and allowance of these claims are respectfully requested.

- **Claim 10:**

Claim 10 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over

Shanumgam in view of Leonardos and Howard. This rejection is respectfully traversed for at

least the following reasons.

Claim 10 is dependent from one of independent claim 6. As discussed above, the

proposed combination of Shanumgam in view of Leonardos fails to disclose all of the

features of independent claim 6. In setting forth the rejection of claim 10, the Examiner has

not and cannot reasonably assert that the disclosure contained in Howard makes up for any of

the deficiencies with respect to the proposed combination. Accordingly, even assuming for

the sake of argument that one of ordinary skill in the art were somehow motivated to modify

the proposed combination of Shanumgam in view of Leonardos with the disclosure contained

in Howard, the proposed modification would still fail to yield all of the features of

independent claim 6, from which claim 10 depends.

For at least the foregoing reasons, the Examiner has failed to establish that claim 10 is

prima facie obvious in view of the combined disclosures contained in Shanumgam,

Leonardos and Howard, as proposed by the Examiner. Therefore, withdrawal of the rejection

of claim 10 and allowance of this claim is respectfully requested.

- **Claims 16, 18, and 19:**

Claims 16, 18, and 19 were rejected under 35 U.S.C. §103(a) as allegedly being

unpatentable over Shanumgam in view of Leonardos and Shum. This rejection is respectfully

traversed for at least the following reasons.

Claims 16, 18, and 19 are dependent from one of independent claims 1, 6, and 12. As discussed above, the proposed combination of Shanumgam in view of Leonardos fails to disclose all of the features of independent claims 1, 6, and 12. In setting forth the rejection of claims 16, 18, and 19, the Examiner has not and cannot reasonably assert that the disclosure contained in Shum makes up for any of the deficiencies with respect to the proposed combination. Accordingly, even assuming for the sake of argument that one of ordinary skill in the art were somehow motivated to modify the proposed combination of Shanumgam in view of Leonardos with the disclosure contained in Shum, the proposed modification would still fail to yield all of the features of independent claims 1, 6, and 12, from which claims 16, 18, and 19 depend.

For at least the foregoing reasons, the Examiner has failed to establish that claims 16, 18, and 19 are *prima facie* obvious in view of the combined disclosures contained in Shanumgam, Leonardos and Shum, as proposed by the Examiner. Therefore, withdrawal of the rejection of claims 16, 18, and 19 and allowance of these claims are respectfully requested.

Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this

application are earnestly solicited. Should the Examiner believe that a telephone conference

with the undersigned would assist in resolving any issues pertaining to the allowability of the

above-identified application, please contact the undersigned at the telephone number listed

below. Please grant any required extensions of time and charge any fees due in connection

with this request to Deposit Account No. 08-2025.

Respectfully submitted,

Dated: March 10, 2010   By   /Ashok K. Mannava /
                                                Ashok K. Mannava
                                                Registration No. 45,301
                                                (703) 652-3822

                                                MANNAVA & KANG, P.C.
                                                11240 Waples Mill Road
                                                Suite 300
                                                Fairfax, VA 22030
                                                (703) 865-5150 (facsimile)